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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITHERM FOOD SYSTEMS, INC., an
Illinois corporation; and JENNIE-O-FOODS,
INC., a Minnesota corporation,

Plaintiffs.

vs.

SWIFT-ECKRICH, INC. d/b/a ConAgra
Refrigerated Foods, a Delaware corporation,

Defendant.

Case No. CIV-01-347-C

DECLARATION OF DR. CHRISTOPHER P. SALM

I, Dr. Christopher P. Salm, declare as follows:

1. I am Vice President of Research and Development for defendant ConAgra Refrigerated Foods. The matters in this declaration are based upon my personal knowledge. If called as a witness, I could testify competently to these facts. This declaration is hereby submitted in lieu of an affidavit pursuant to 28 U.S.C. §1746.

2. I obtained a Bachelors of Science degree in Animal Science from the University of Wisconsin in Madison in 1975. I obtained a Master's degree and a Ph.D. in Animal Science from Purdue University in 1978 and 1981, respectively. I have worked in product development, process development and research and development in the processed food industry for over 20 years.

3. During the last 20 years, I have worked with different companies, including Red Arrow Products Company, that sell liquid smoke products to be applied to meat products for browning and/or smoking. Based on my educational experience and my experience in the processed food industry, I know that liquid smoke products are not browning liquid pyrolysis products if the products impart a smoke flavor but do not promote the browning of meats. For example, Red Arrow currently sells the following liquid smoke products which are

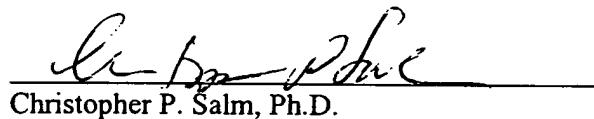
EXHIBIT A

PTO-003146

not browning liquid pyrolysis products: Aro-Smoke P-50, Aro-Smoke 8056, Aro-Smoke 8068, Charoil Hickory, Charoil Mesquite, Charoil B and Charoil Hickory Double Potency.

4. Therefore, it is my opinion that one cannot determine whether a liquid smoke product is a browning liquid pyrolysis product without knowing information relating to the properties of the product at issue (i.e. whether a smoke flavor is imparted, whether a browning of the meat is promoted, etc.).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on June 6, 2002, at Downers Grove, Illinois.



Christopher P. Salm, Ph.D.

Date: December 3, 1997

*copy's for
Virginia*

Anika

To: R. Scalise
 K. Keenan (J. Stephens) R. Goodman F. Carroll
 A. Colglazier D. Billow S. Gershenson T. Bentley
 J. Cappozzo P. Singh J. Costelloe P.Y. Wang
 M. Heakin J. Coccaro C. Saim T. Nestor

Fr: S. Burns

Re: Turkey Breast Product Improvement Project

Recap of Panel held Dec. 2

- The group reviewed samples of a 40% pump Butterball oil browned product compared to the control Butterball OR product. The 40% pump product appeared to be more "dry" than the control.
- Also reviewed were Maylose samples which the group agreed have an appealing appearance similar to that of a Thanksgiving roasted turkey.
- Stan & his group will continue to explore alternate options to oil browning (Maylose, electrostatic coating, laser technology).

Next Meeting/Next Steps

The meeting originally scheduled for December 9th (per the attached memo) has been rescheduled for Thursday, December 11 at 9:30 am in the PDL kitchen. Please come prepared to update the group on the progress in your area of responsibility.

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PTO-003070

- Consumer / Sensory Test
 - Produce Sample (How many? When? What? Package?)
 - Conduct Tests (Appearance, Flavor, Texture, Performance, etc.)
- Prepare Cost Implications (DSC, etc.) - (in process) *جذب ميزانية*
- Capital Costs / Layouts / Specification / Recommendation (in progress)
- CER Approval
- Install / HACCP
- Market *سوق*
- Technology Lock-up (in progress)

OVEN BAKED TURKEY
DECISION FLOW - PRODUCT ATTRIBUTES

Characteristics	Oil Browning			Non - Oil Browning				
	Descriptive Score	Score* 1-10	Weight %	Weighted Score	Descriptive Score	Score* 1-10	Weight %	Weighted Score
• Flavor Durability	Not good. Degrades with time	3	25	75	Durable Flavor may change with time	7	25	175
• Flavor Perception	Varies with time difficult to control unhealthful	6	25	150	More controllable, should not very with time	8	25	200
• Mouth Feel	Greasy, fishy taste particularly as time goes on	6	10	60	Clean, non greasy flavor	8	10	80
• Texture	Okay	8	5	40	Okay	8	5	40
• Appearance uniformity	Uniform	8	10	80	Uniform	7	10	70
• Baked	More towards black hue	6	25	150	Golden Brown	8	25	200
OVERALL WEIGHTED PRODUCT ATTRIBUTES SCORE				550				765

*  Worst Performance  Best Performance

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OVEN BAKED TURKEY
DECISION FLOW - OPERATION CHARACTERISTICS

Characteristics	Oil Browning			Descriptive Score	Non - Oil Browning	Weight %	Weighted Score	
	Score*	1-10	Weight %		Score 1-10	Weight %		
• Operating Efficiencies	Involved operation oil frying, filters, oil quality control, oil temperature, FFA difficult to control and maintain	5	30	150	Relatively easy to operate no FFA problem, Maillose at constant concentration. Filter needed. Level control.	7	30	210
• Safety	Extra safety must be taken, fire hazard, high temperature, face shield	5	30	150	Closed system. No particular safety issue. Maillose handling.	6	30	180
• Environmental	Vent oil vapor.	6	10	60	Vent Maillose.	6	10	60
• Cleanability	Dispose oil	5	15	45	Dispose Maillose	6	15	90
• Maintenance		6	15	90		7	15	75
OVERALL WEIGHTED PRODUCT ATTRIBUTES SCORE								615
								765

* 10 Best Performance
 5 Worst Performance

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CRPFO7879

OVEN BAKED TURKEY
DECISION FLOW - COST IMPLICATIONS

	<u>Oil Browning</u>	<u>Non Oil - Browning</u>
Capital Cost	\$0.8 - 0.9 mm (Estimated) will confirm	\$1.1 - 1.2 mm
Delivery	16 weeks	16 weeks
DSC	12.5¢/pound incremental basis 143% pump	4¢/pound incremental basis 138% pump

7 ✓
 Incremental
 Cumulative
 Cumulative

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CRPFO7880

Date: December 12, 1997

To: K. Keenan F. Carroll A. Colglazier D. Billow T. Bentley
J. Cappozzo P. Singh J. Costelloe P.Y. Wang T. Nestor
CC: R. Scalise J. Stephens R. Goodman R. Bartemeyer M. Heakin
Fr: S. Burns/S. Gershenson
Re: Turkey Breast Product Improvement Project - 12/11/97 Meeting Recap

Issue: Determine cost/timing/other factors related to switch to Longmont shape.
Status: Need update from F. Carroll.

Issue: Explore alts. to poultry netting/carmel color (w/out stripping from bag).

Status: Overall, determined to be a longer-term initiative. Curwood (Jonesboro/Longmont film supplier) has not tested concept. Cryovac (Honey Creek supplier) is approx. one year away from testing alternatives to both netting & carmel.

Issue: Investigate oil browning methodology.

Status: Will run two 10M lb. test batches of product: (1) 40% pump with no lactate/diacitate, and (2) 40% pump w/low levels of lactate/diacitate. The samples will be used to test the following oil browned processes with: (1) Jonesboro oil (soybean), (2) Longmont oil (soybean), and (3) preferred oil (determined w/ help of resource Jerry Sloan --could be soybean or cottonseed). Also, samples of oil will be tested throughout the day. Potentially, we can improve the quality of oil browned products by using a more hydrogenated oil, which provides better stability. The test products will be sensory tested initially and again 30-40 days later. A secondary test will be run with the goal of getting a lighter, more golden brown color of oil browning by adjusting the dextrose levels. Test samples expected to be ready by January 10th. Oil browning is an option that is feasible for 4th quarter implementation as equipment appears to be currently available; however, capacity issues need to be addressed.

Issue: Investigate Maillose alternative to browning.

Status: Primary concern with using Maillose process to impart color is shelf life. However, shelf life issues can be addressed by adding a post-pasteurization process. We would need sufficient lead time to build a post pasteurizing unit along with a chiller. Plan is to test samples with and without post pasteurization. Also, excess amount of gelatin on outside of product needs to be addressed. Samples are expected to be available January 10th.

Issue: Investigate laser option to browning.

Status: Product (with current pump levels) will be sent to outside supplier for testing. Feedback expected by January 10th.

The group agreed to convene for a brief status meeting during the week of January 5th. During the following week (week of January 12th), samples from the various tests noted above will be available for review.

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PTO-003076

INTEROFFICE MEMORANDUM ARMOUR SWIFT ECKRICH

January 12, 1998

Cc: R. Scalise K. Keenan R. Bartemeyer J. Stephens
F. Carroll A. Colglazier D. Billow J. Cappozzo
P. Singh P. Wang T. Nestor D. Sommerio
T. Brubaker-Jonesboro

To: S. Burns
Subject: Status Report-Turkey Browning Project

Activities In Progress1. Longmont Deli Shape

Frank Carroll has reviewed the costs and timing associated with the changeover in Jonesboro to the Longmont shape. He estimates that it will cost approximately \$60,000 to convert all the die pockets in Jonesboro to the Longmont shape and approximately 12 weeks lead time.

Suggested Next Steps

An R&E must be generated by Operations with Management's approval as soon as possible. The consumer tests indicated that this shape was preferred by consumers.

2. Oil Investigation

Discussions have taken place with research personnel from Lamb Weston, Hunt Wesson and the Institute of Shortening and Edible Oils regarding the frying oil and processing times/temperatures we are currently using to manufacture processed turkey breasts. Representatives of all companies stated, in their opinion, we are using the wrong type of oil for frying turkey breasts. We brown in nonhydrogenated soybean oil, which is prone to having off notes of "fishy" flavors. They suggest that we use either corn oil, cottonseed oil, hydrogenated soybean oil or low linolenic content canola oil.

Suggested Next Steps

I suggest that tests be conducted on corn oil, cottonseed oil and canola oil in to determine the preferred oil. In my opinion, hydrogenated soybean oil should be given lowest consideration because of the potential consumer negative feedback from the hydrogenation process. These tests will be conducted in by January 26.

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Anita is conducting a thorough investigation of the browning practices of Longmont and Jonesboro (Kansas City as well). This includes frying times, temperatures and handling practices. This includes tests on the quality of oil, storage conditions and oil changing frequency. This information will help us understand the discrepancies between plant practices. This information will be used to standardize procedures.

3. Alternative Oil Brown Color

In our last project review session, Deb Billow suggested that we may not be optimizing consumer visual acceptance by browning in the usual manner. Even if we improve our browning practices, Deb felt we would be offering consumers the same browned appearance we currently offer. I agreed to attempt to reformulate our current product by adjusting the dextrose content to achieve a more natural, golden product when browned (similar to natural oven roasted). Tests were conducted in the pilot plant and this product were browned in Longmont this week. In addition, tests have been conducted in the pilot plant utilizing enriched turkey broth and mild, sweet onion to enhance natural roast turkey notes.

Suggested Next Steps

Samples of alternate browned turkey breasts will be evaluated this week along with the enriched flavored browned turkeys. Upon further direction from Management, we will accelerate development of the best of these flavor/appearance variables. It is estimated that we will need to pump the turkey breasts 38% to minimize the cost increase through browning. Production size batches of the optimized formula, if desired, could be produced by February 10th.

4. Maillose Browned Product

Tests are being conducted in the pilot plant on maillose treated turkey breasts. Jim Costeloe's first priority has been to develop a consistent golden brown color. Now that it appears he has the process perfected, he will put up product for shelf life purposes. We anticipate that shelf life may be a problem, so product will be tested with and without post pasteurization.

Suggested Next Steps

Maillose browned product will be prepared for shelf life purposes during the week of January 19th. Product will be available for Management's review, on a periodic basis in early February.

5. Laser Browned Product

We have contacted Synrad Laser Company regarding the browning of turkey breasts. Synrad is conducting extensive tests on laser treating Butterball turkey breasts.

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Suggested Next Steps

Review the samples Syrad will send us in mid to late January and update the group.

A review meeting has tentatively been scheduled for Monday, January 19 at 3:30 p.m. in the consumer test kitchen.



Stan Gershenson

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PTO-003079



DATE: January 29, 1998

TO: Rod Bartemeyer Maureen Heeakin
 Deb Billow Kevin Keenan
 Frank Carroll Rich Scalise
 Stan Gershenson John Stephens
 Rick Goodman Beth Bernardi

FROM: Sue Burns *AB*

cc: Tom Nestor

RE: Poultry Project - Jan. 27th Meeting Summary

Below are follow-up issues & next steps from the Poultry Business Review & product cutting meeting held earlier this week.

Butterball OR Shape

General agreement to change to Longmont shape

Next Steps

- Review Longmont sample vs. regular BB to ensure there's enough of a change on Fri., Jan. 30 (Stan)
- Complete R&E by mid week of Feb. 2 (Frank, Stan)

Butterball Color

Continue R&D effort to brown product with overall goal of optimizing appearance without changing flavor (if possible). Group agreed that product testing will be needed for taste (at a minimum).

Next Steps

- Produce samples using the following methods: (Stan)
 - Oil browning (ignore addition of whey to formulas)
 - Maillose
 - Laser
 - Impingement
- Develop weekly R&D timeline (Stan)
- Set up competitive cutting of browned products (Stan, Sue)

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PTO-003080

Butterball Entry Strategy

Entry strategy needs to be fully developed including consideration of key accounts that carry both OR & browned. Inventory phasing should also be addressed. Consider rebates as part of sell-in strategy to get trade to take on new skus. We agreed that distribution objectives should be regionalized.

Next Steps

- Develop detailed entry strategy including plans for specific key accounts – Food Lion & Publix (Kevin, Rod, Sue, Rick)
- Obtain BB BDI by mkt (whole bird, packaged) (Maureen, Sue)
- Establish regional distribution objectives (Kevin, Rod)

Butterball Segmentation

Agreed to segment BB into 4 varieties: OR, Honey/Smoked, Flavored, Chicken & support via packaging, sales materials, promotion, etc. Group agreed that focus will move away from fat free on label.

Next Steps

- Initiate package redesign; develop creative brief (Sue)
- Look at product differences (panel) low salt vs. BB OR (Stan)

Other

- Develop weekly timeline for project launch (Sue, Stan)
- Complete operational assessment of low to mid tier products/ consider sku rationalization (Kevin, Frank)
- Obtain understanding of # poultry slots per market
 - Deli scan analysis cost is \$1M (Sue, Maureen)
- Can we call OR "naturally" roasted? (Stan)
- Why is Winn Dixie up year-to-year? (Rod)
- Add FY96 to key account analysis (Beth)

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Water profile

Maillese brown

Oil burning. ~~Eff~~ - trying to get this in a memo
shortly next week. Can do
will give my list in 2 types - Govt
more stability & other side know what.

User -style it -

Next Thurs → panel of browned & lower profile
Comparative panel of browned

Send Skill Memo of skills

me me
to
start

Willy 2123 W 18th

→ **TYPE** ⇒ *This has a yinole in conversion*

marketing nationale \Rightarrow Tim Beale

Oil brine with brine samples for this
site left over at 1500

Lippens \Rightarrow Mailloux simple (Real power)
Supplier
Last test (1) ~~done~~ (2) United
Thanksgiving dinner

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PTO-003082



DATE: February 17, 1998
TO: S. Gershenson
CC: D. Billow
FROM: S. Burns *AB*
RE: Next Week's Poultry Panel

Stan, as we discussed yesterday, I will schedule a meeting for next Thursday, February 26 at the PDL to review the following:

- Browned turkey breast samples using the following methods:
 - Maillose
 - Oil browning (both cottonseed & corn oil – both w/out whey)
 - Impingement
- Lower profile breast from Longmont – to finalize approval for moving to the natural shape

It would be helpful to have on hand the additional products noted below:

- Longmont 429
- BB Browned (Jewel #30326)
- BB OR #27312
- Alpine Lace (caramel color)
- Boar's Head Ovengold - Bill Devine
- Dietz & Watson Premium (browned in canola oil)
- Sara Lee Premium

Longmont 429
BB Browned (Jewel #30326)
BB OR #27312
Alpine Lace (caramel color)
Boar's Head Ovengold - Bill Devine
Dietz & Watson Premium (browned in canola oil)
Sara Lee Premium

Please be prepared to discuss the browning process you recommend along with a preliminary timeline.

Thanks for your continued support with this project!

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① (last week)
 ② (next week)
 ③ now we will
 (beginning)
 (up to engineer)

DATE: March 3, 1998
 TO: Rod Bartemeyer Maureen Heakin
 Deb Billow Kevin Keenan
 Frank Carroll Rich Scalise
 Stan Gershenson John Stephens
 Rick Goodman Chris Salm
 Anita Colglazier P.E. Wang
 FROM: Sue Burns
 cc: Tom Nestor

RE: Poultry Project - Recap of Cutting Held Thurs., Feb. 26th

Below is a brief recap of the browned breast cutting held last week along with timing & next steps.

- Reviewed lower profile Longmont product and finalized the decision to change the Butterball OR to a natural shape. R&E in progress and expected to be complete by the end of this week.
- Reviewed various browned samples including oil browned & maillose.
 - Oil browned - R&D will continue to test/optimize oil browning (cottonseed & corn oil) as a product improvement project for existing products (& as a fall-back position for maillose if necessary)
 - Maillose - Reviewed the color & flavor of various samples. The group agreed to target a "darker" browned color. Testing at 3 suppliers will continue (Unitherm, Koppens, Stein) & samples are expected to be ready for review by Thursday, March 19. Preliminary costing will also be available at the next panel. R&D will initiate shelf life testing.
- Other issues that require follow-up by March 19th:
 - Provide list of product claims that can be made using maillose process; e.g. what do we need to do to call the product "baked", can we call OR "naturally" roasted? (Stan)
 - Develop detailed project launch timeline (Stan, Sue)
 - Design entry strategy including plans for specific key accounts (Kevin, Rod, Rick, Sue)

As noted above, the next meeting/panel is expected to be Thurs., March 19th – details to follow shortly.

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5/4/98
meeting

MAILLOSE PROJECT UPDATE

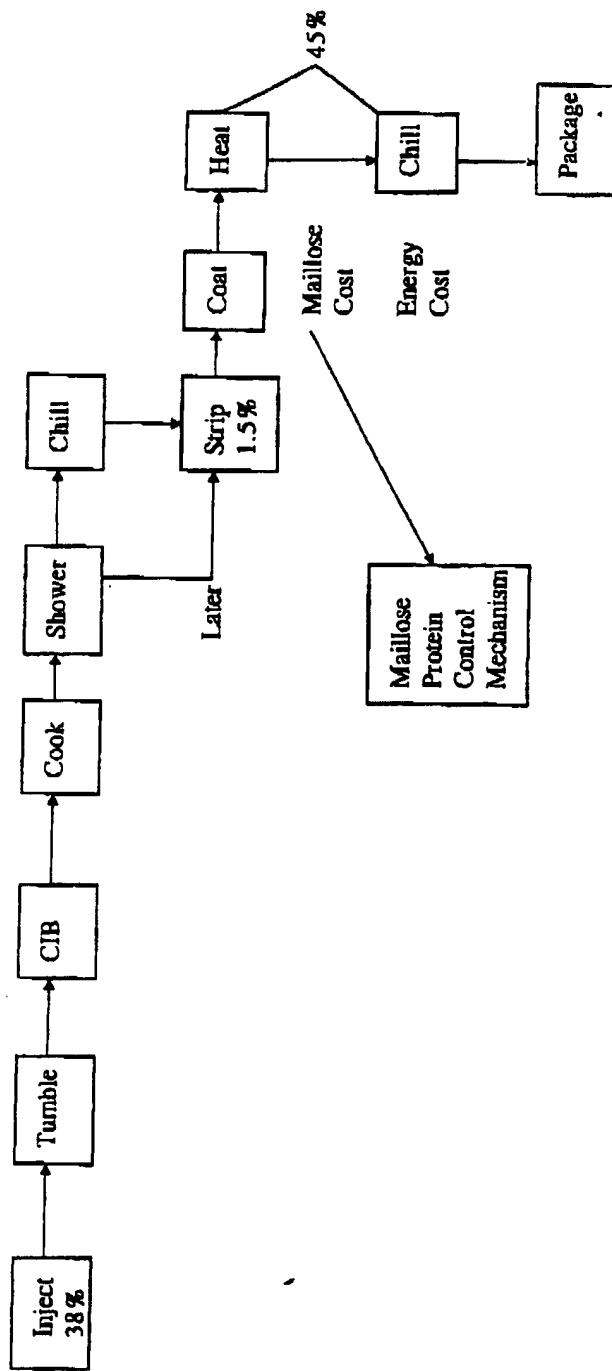
STEPS	RESPONSIBILITY	DATES
1. Define Process	Prem/Stan	
- Assume chill then strip		
- In plant testing for confirmation and uncover unknown		
2. Define pump / formula	- 38% - Lactate / Diacetate for lactose - None - test 5/6 get started	Stan
(Chill without pump?)		
3. Define Jonesboro layout		
4. Define supplier		
5. Define product cost		
6. Develop CER		
7. Shelf life - Micro / Texture / Flavor / Color		
8. Color Ring		
9. Maillose Safety guarantee (health hazard) - Red Arrow		
10. Installation timetable		
11. Patent Process		

"Ring" update. (Boston) Current "Ring" -
Prelm → plan place → Newing -
run end of April
This Friday - original product will be 10 days old
② review Boston product
③ review Boston product

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TO-003086

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longmont meat properly trimmed → ~~retry & timing~~
 may be better than 98%.

~~for free~~

020

Next we
 may
 after 9/15

Poultry Relaunch
 Weekly Status Meeting
 May 8, 1998

Discussion Topics

■ Food Service Issues

- Healthy Choice - change from 100% fat free, packaging
- Butterball - no significant issues per Paul

■ Project Status/ Timeline

- Healthy Choice formula change
- Product costing
- Ring issue
- Shelf life
- Nutritional

■ BB Chicken & HC Chicken - browning issues

make samples next week > current formulations

maillard

+

oil brown

→ need to run
 bags out → should be
 synchronized ~~today~~
 running samples ~~today~~
 the current
 within next 2 weeks
 initiate serving

~~end of next~~

~~last week of~~

By the 28th of May

start shelf life

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issue 5 both made in Jonesboro

1f Maillard → need to ship to longmont

1f oil browned → can stay in Jonesboro

shelf life 60-65

now 110

CRPF07893

F/u → ~~to~~ w/ Tom ~~test~~

current making HC oil brown

~~Sh~~



DATE: May 11, 1998
TO: R. Bartemeyer, F. Carroll, A. Colglazier, T. Nestor, S. Gershenson,
FROM: L. Saguto, P. Singh
CC: S. Burns *AB*
RE: May 9th Poultry Project Meeting Recap

Below is a brief summary of issues discussed:

- *Project timeline*
 - See attached for R&D/ Operations timeline
 - Weekly timeline to be discussed at the next status meeting (5/15/98)
- *Impact of "browned" change on Food Service*
 - Butterball – no significant issues per Paul P.
 - Healthy Choice – Lori Saguto & Tom Nestor are exploring options and will update the group at the next meeting
- *Proposed Healthy Choice formula change (from carr. to starch)*
 - Stan is running samples, group will review & then sensory testing will be completed
- *Proposal to "brown" BB chicken & HC chicken*
 - Stan will have product available to review by May 22
 - Product will include both BB & HC chicken skus browned in 2 ways: oil brown & maillose
 - Shelf life testing will commence immediately after panel (currently 110 days, browned 60-65 days expected)
 - Both HC & BB chicken are currently made in Jonesboro; if oil browning is the methodology, product can stay in Jonesboro. If maillose- product will have to be shipped to Longmont.

The next project team meeting will be held at approx. 9:15 on Friday, May 15th - immediately after Rich's staff.

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Activity Timetable-Maillose Turkey Project

<u>Activity</u>	<u>Responsible</u>	<u>Timing</u>
1) Define Plant Location	Scalise/Carroll	5/6
2) Meeting With Engineers	Cantu/Sima/Singh	5/8
3) Color Ring Tests-Koppens	Singh/Papinaho	5/11-5/26
4) Shelf Life Determination	Gershenson	In Progress-5/8(60 Days)
5) Define Process	Singh/Gershenson	5/26
6) Define Pump/Formula <i>W/out lactate/diacetate</i>	Gershenson	8/12 <i>Final no 60 days out</i>
7) Determine Nutrition	Gershenson	5/30
8) Define Plant Layout	Singh/Sima	5/31
9) Define Supplier	Singh/Cantu/Singh	5/26
10) Define Product Cost	Carroll	5/31
11) Develop C.E.R.	Sima/Cantu/Singh	5/31
12) Safety Guarantee-Maillose	Singh	5/26
13) Installation Timetable	Singh	5/26-16 Weeks/4 Weeks <i>fin's signature 5/26 delivery installation</i>
14) Patent Application	Singh	Done

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED

UNITHERM FOOD SYSTEMS, INC., an
Illinois corporation; and JENNIE-O FOODS,
INC., a Minnesota corporation,

Plaintiffs,

v.

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Defendant.

JUN 11 2002

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
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Case No. CIV-01-347-C

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**DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT REGARDING PATENT
INVALIDITY AND UNENFORCEABILITY, AND DEFENDANT'S
ASSOCIATED MOTION TO STRIKE EXHIBITS TO PLAINTIFFS' MOTION**

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**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

Case No. CIV-01-347-C

UNITHERM FOOD SYSTEMS, INC., an Illinois corporation;
and JENNIE-O FOODS, INC., a Minnesota corporation,
Plaintiffs,

v.

SWIFT-ECKRICH, INC., d/b/a CONAGRA
REFRIGERATED FOODS, a Delaware corporation,
Defendant.

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Attorneys for Defendant Swift-Eckrich

June 11, 2002
